

<sup>2</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its January 25, 2017 decision. The Board's jurisdiction is limited to evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

### **FACTUAL HISTORY**

On November 7, 2014 appellant, then a 38-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained depression, insomnia, and anxiety causally related to factors of her federal employment. The employing establishment indicated that she was last exposed to the conditions alleged to have caused her condition on October 9, 2014.

The record indicates that appellant received a letter of warning on March 14, 2013 for unacceptable work performance.

In a statement dated October 10, 2014, appellant related that she began working in her current location in September 2010. She alleged that she had limitations due to a work injury and worked without a job offer. Appellant further contended that management had retaliated against her after she challenged a December 24, 2012 action letter by not paying her holiday pay, deleting clock rings, and changing a clock ring on September 12, 2014 to leave without pay (LWOP). Management did not provide advance notice of her assignments. Appellant concluded that she sustained depression and anxiety from pain and limitations due to the claimed job injury and retaliation/discrimination by management.

On February 10, 2015 appellant related that, on August 28, 2014, she requested and was granted leave by the employing establishment. A supervisor, L.C., who worked at another location, altered the clock ring to show that her leave status was LWOP. Due to the alteration, appellant lost wages and experienced depression. The employing establishment did not offer her a pay advancement to correct the change in the clock ring, but instead offered a pay adjustment. Appellant maintained that she experienced periodic abuse of clock rings, worked without a job offer, was not allowed to bid on assignments, and did not know her assignments in advance. She filed a grievance and an Equal Employment Opportunity (EEO) complaint that was pending. Appellant attributed her condition to “on again and off again clock ring abuse, harassment, and errors by the agency,” including working without a job offer, the denial of bidding on routes, and the failure to obtain assignments. She noted that she worked limited rather than light duty and thus should have been allowed to opt on a route.

In a December 1, 2014 Step B decision, a dispute resolution team with the employing establishment resolved appellant’s grievance after finding no violation of the National Collective Bargaining Agreement. It discussed her allegation that management did not comply with a grievance settlement by failing to explain why it had deleted her clock rings. The team noted that appellant had requested eight hours sick leave on August 28, 2014. L.C. marked the leave for eight and a half hours, which caused it to default. Management subsequently adjusted her pay, which she declined. L.C. did not know why he entered information for appellant. The dispute resolution team found that management was not purposefully failing to provide information.

In another December 1, 2014 Step B decision, a dispute resolution team found that management erred in failing to post a weekly schedule in appellant’s work location. It noted that whether she could opt on an assignment “must be addressed on a route by route basis” and that management should provide her a job offer.

By decision dated May 13, 2015, OWCP denied appellant's emotional condition claim, finding that she had not established any compensable factors of employment.

Appellant, on June 8, 2015, requested an oral hearing before an OWCP hearing representative. During the hearing, held on October 8, 2015, she reiterated her allegations of retaliation and unfair treatment by management.

By decision dated December 3, 2015, an OWCP hearing representative affirmed the May 13, 2015 decision. She reviewed appellant's allegations and noted that a Step B resolution indicated that whether she could opt on an assignment was evaluated on a case-by-case basis. The hearing representative found that she had not identified routes that the employing establishment refused to allow her to bid on. She noted that appellant's allegations regarding working without a job offer and not receiving advance notice of assignments resulted from the December 24, 2012 letter that removed her from her bid assignment due to her work limitations. The hearing representative found that her later reassignment to limited duty was an administrative matter and that she had not shown error or abuse. She determined that appellant had not shown error or abuse by the employing establishment in issuing a March 14, 2013 letter of warning. Regarding the clock ring error, the hearing representative noted that a December 1, 2014 Step B resolution found that management explained the error and adjusted her pay.<sup>3</sup> She found that appellant had not established disparate treatment based on management's failure to provide her with advance notice of assignments, as she did not describe specific incidents and the employing establishment indicated that the schedules were based on staffing needs and the season. Regarding the Step B decision finding that management erred in failing to post a weekly schedule, the hearing representative found that appellant had not shown when and where the violation occurred or how it related to her duties. She concluded that she had not established a compensable work factor.

By letter dated December 1, 2016, received by OWCP on December 6, 2016, appellant requested reconsideration. She asserted that during the period February 12 through 22, 2013 managers changed her work hours to LWOP so she could not receive holiday pay. On July 18, 2013 the employing establishment advised that her salary was being reduced effective June 2013 when she should have continued at the same salary for two years after it removed her from her bid position. Management changed appellant's holiday pay from eight to four hours on January 1, 2014 and she filed a grievance regarding the change. Appellant contended that her coworkers were made aware of schedule changes, but she was not notified of assignments in a timely manner. She also alleged a hostile work environment.

In support of her request for reconsideration, appellant submitted a page from a union contract indicating that unassigned regulars had opting rights, and a portion of a manual indicating that an individual assigned to a lower grade retains pay for two years under certain specified conditions.

K.W., a supervisor, advised in a March 7, 2015 EEO investigative affidavit that an individual deleted appellant's approved sick leave for August 28, 2014 and thus it defaulted to

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<sup>3</sup> The hearing representative indicated that the Board, in a similar case, had not found error or abuse where a coding error was quickly resolved. She cited *M.H.*, Docket No. 11-0309 (issued September 27, 2011).

LWOP. He adjusted her pay when informed of the situation. In an undated witness statement, L.B., a union president, advised that L.C. did not know why his identification number was used in deleting appellant's clock ring for an absence in August 2014.

Appellant submitted copies of the grievance she filed regarding the alteration of her clock ring to show LWOP on August 28, 2014. She also submitted a Step A grievance form dated January 30, 2014 alleging that management violated a contract when it paid her for only four hours of holiday pay on January 1, 2014. Appellant also submitted medical evidence and time and attendance reports indicating that at various dates in 2013 rings were deleted from the computer.

By decision dated January 25, 2017, OWCP denied appellant's request for reconsideration of its December 3, 2015 decision as it was untimely filed and failed to demonstrate clear evidence of error.

On appeal appellant contends that she timely requested reconsideration, as evidenced by a delivery confirmation and receipt.

### **LEGAL PRECEDENT**

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a) of FECA.<sup>4</sup> One such limitation, 20 C.F.R. § 10.607, provides that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> OWCP will consider an untimely application only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.<sup>6</sup>

The term "clear evidence of error" is intended to represent a difficult standard. The claimant must present evidence which, on its face, shows that OWCP made an error. Evidence such as a detailed, well-rationalized medical report which, if submitted prior to the denial, would have created a conflict in medical opinion requiring further development, is not clear evidence of error and would not require a review of the case on the Director's own motion.<sup>7</sup> To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that it committed an error.<sup>8</sup>

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> 20 C.F.R. § 10.607. OWCP regulations changed effective August 29, 2011. Section 10.607 of the revised regulations provides that the date of the reconsideration request for timeliness purposes was changed from the date the request was mailed to the date the request was received by OWCP. 20 C.F.R. § 10.607(a).

<sup>6</sup> 20 C.F.R. § 10.607.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.5(a) (February 2016).

<sup>8</sup> *Robert F. Stone*, 57 ECAB 292 (2005); *Leon D. Modrowski*, 55 ECAB 196 (2004); *Darletha Coleman*, 55 ECAB 143 (2003).

## ANALYSIS

The Board finds that OWCP properly determined that appellant failed to file a timely reconsideration request. Its procedures provide that the one-year time limitation period for requesting reconsideration begins on the date of the original OWCP merit decision.<sup>9</sup> A right to reconsideration within one year also accompanies any subsequent merit decision on the issues.<sup>10</sup> As appellant's request for reconsideration of the December 3, 2015 OWCP decision was received on December 6, 2016, more than one year later, the Board finds it was untimely filed. Consequently, she must demonstrate clear evidence of error by OWCP in denying her claim for compensation.<sup>11</sup>

The Board also finds that appellant failed to demonstrate clear evidence of error. OWCP denied her emotional condition claim finding that she had not established any compensable work factors. On reconsideration, appellant related that managers altered her work hours to reflect LWOP in February 2013 and changed her hours on January 1, 2014 so that she did not receive holiday pay. She additionally alleged that the employing establishment improperly reduced her salary in June 2013 after it removed her from her bid position and failed to timely inform her of scheduled assignments. Appellant further maintained that the work environment was hostile. OWCP, however, previously considered her contentions that the employing establishment committed clock ring abuse, erred in failing to inform her of her assignments in advance, and retaliated and discriminated against her. It further generally considered appellant's allegation that the employing establishment erred in matters relating to her reassignment from her bid position. Appellant has not demonstrated how her contentions raise a substantial question as to the correctness of OWCP's decision.<sup>12</sup>

With her request for reconsideration, appellant submitted a page from a union contract providing unassigned regular with opting rights, 2013 time and attendance reports, and part of a manual indicating that an individual reassigned to a lower grade retains pay for a two-year period. She also submitted an affidavit from K.W., dated March 7, 2015, noting that an individual deleted her sick leave request on August 28, 2014 so it defaulted to LWOP. K.W. adjusted appellant's pay when notified of the matter. In a March 7, 2015 affidavit, L.B. indicated that the supervisor who deleted her clock rings did not know why his identification number was on the alteration. Appellant further submitted statements regarding grievances regarding the alteration of her clock ring on August 28, 2014 and management's failure to pay her holiday pay on January 1, 2014. As discussed, however, OWCP previously considered her allegations regarding these issues and the additional evidence is insufficient to show that OWCP's decision finding that she had not established a compensable work factor was clearly

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<sup>9</sup> 20 C.F.R. § 10.607(a).

<sup>10</sup> *Robert F. Stone*, *supra* note 8.

<sup>11</sup> 20 C.F.R. § 10.607(b); *see Debra McDavid*, 57 ECAB 149 (2005).

<sup>12</sup> *See E.B.*, Docket No. 16-1521 (issued February 3, 2017).

erroneous. Appellant has not explained how this evidence was positive, precise, and explicit in manifesting on its face that OWCP committed an error in denying her claim for compensation.<sup>13</sup>

Appellant submitted medical evidence on reconsideration. This medical evidence, however, is not relevant to the underlying issue of whether she established a compensable work factor.<sup>14</sup> Consequently, the medical evidence is insufficient to demonstrate clear evidence of error.<sup>15</sup>

To demonstrate clear evidence of error, it is insufficient merely to show that the evidence could be construed so as to produce a contrary conclusion.<sup>16</sup> The term clear evidence of error is intended to represent a difficult standard.<sup>17</sup> None of the evidence submitted manifests on its face that OWCP committed an error in denying appellant's claim. She has not provided evidence of sufficient probative value to raise a substantial question as to the correctness of OWCP's decision. Thus, the evidence is insufficient to demonstrate clear evidence of error.

On appeal appellant asserts that she timely submitted the request for reconsideration of the December 3, 2015 decision. As noted above, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>18</sup> OWCP received appellant's reconsideration request on December 6, 2016. Appellant has submitted additional evidence with her appeal, including a tracking receipt. However, as previously noted the Board may not consider new evidence on appeal.<sup>19</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error.

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<sup>13</sup> See *A.S.*, Docket No. 16-0902 (issued September 28, 2016).

<sup>14</sup> See *Margaret S. Krzycki*, 43 ECAB 496 (1992) (when a claimant has not established any compensable employment factors, it is not necessary for OWCP to consider the medical evidence of record).

<sup>15</sup> See *J.E.*, Docket No. 15-0131 (issued September 9, 2015).

<sup>16</sup> See *L.B.*, Docket No. 17-0760 (issued September 5, 2017).

<sup>17</sup> See *James R. Mirra*, 56 ECAB 738 (2005).

<sup>18</sup> See *supra* note 5; see also *S.R.*, Docket No. 17-0271 (issued April 24, 2017).

<sup>19</sup> See *supra* note 2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 25, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board